

804 KAR 9:050. Quota retail drink licenses.

RELATES TO: KRS 241.060, 241.065, 242.125, 242.127, 242.129, 243.030, 243.230

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(2) authorizes the board to limit the number of licenses of each kind or class to be issued in this state or any political subdivision, and restrict the locations of licensed premises. This administrative regulation establishes quota retail drink licenses in cities that have become wet pursuant to KRS 242.125 separately from their respective counties that remain dry.

Section 1. Establishment of General City Quotas. (1) Except as provided in subsection (2) of this section and Section 4 of this administrative regulation, the number of quota retail drink licenses issued by the department in a city of the commonwealth which becomes wet separately by virtue of a KRS 242.125 local option election shall be one (1) for every 2,500 persons resident in the city.

(2) The minimum number of quota retail drink licenses issued by the department in a city shall be two (2) licenses.

(3) A wet city with a population of 3,000 through 7,999 shall not receive any quotas under this section unless a majority of the votes cast in an election held under KRS 242.127 and KRS 242.129 are in favor of the sale of distilled spirits and wine by the drink for consumption on the premises.

(4) The estimates of population for Kentucky cities prepared by the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, shall be used in every year except a census year to determine the number of licenses prescribed by this administrative regulation. The United States Government census figures of population shall be used in a census year.

Section 2. Requests for Specific City Quota. (1) Three (3) or more years after the certification of a wet election pursuant to KRS 242.125 or pursuant to KRS 242.127 and 242.129, the city may file a request to the board seeking a specific city quota to increase the number of quota retail drink licenses for the city.

(2) Before seeking this request, the city shall publish a notice in the newspaper used by the city for legal notices advising the general public of the city's intent to request additional city quota licenses from the board.

(3) A city's request to the board for a specific increased quota shall include:

- (a) A certified copy of a city's governing body government resolution approving the request;
- (b) A certified copy of the notice referenced in subsection (2) of this section; and

(c) An explanation why the city meets the criteria for a quota increase in conformity with Section 3 of this administrative regulation.

(4) Upon receiving a city request satisfying subsection (3) of this section, the board may promulgate, in conformity with KRS Chapter 13A, an amendment to Section 4 of this administrative regulation which sets a higher specific quota for the city.

(5) The specific city quota for quota retail drink licenses set by the board in subsection (4) of this section shall not exceed a ratio of one (1) for every 1,500 persons resident in the city.

(6) This section shall not guarantee that a city will receive the requested specific city quota even if the board promulgates an initial amendment pursuant to subsection (4) of this section. The city shall bear the burden of showing the requested increase is necessary due to a change in circumstances from the previous request and that current needs are not being met by the current license holders.

(7) If the board rejects a request made under this section, the board shall notify the city of its decision by registered mail at the address given in the request. Within thirty (30) days after the date of the mailing of the notice, the city may indicate, in writing, its desire for an administrative hearing before the board regarding its request. The hearing shall be conducted in accordance with the provisions of KRS Chapter 13B.

(8) Following an initial request for an increase under subsection (1) of this section, a city may file an additional request to the board once every three (3) years from the date of the denial or establishment of a specific city quota. The procedures established in subsections (1) through (7) of this section shall be followed.

Section 3. Criteria for Consideration. (1) The board shall consider the following information in its determination of a city's request for an increased quota made under Section 2(3) of this administrative regulation:

- (a) Population served by the city;
- (b) Total retail sales of the city for the most recent past fiscal year;
- (c) Retail sales per capita for the most recent past fiscal year;
- (d) Total alcohol sales in the city for the most recent fiscal year;
- (e) Tourist destinations in the area, if applicable; and
- (f) Other economic and commercial data offered to show the city's capacity to support additional licenses.

(2) The board shall grant the request if the factors considered under subsection (1) of this section justify the requested increase.

Section 4. Establishment of Specific City Quotas. (1) Danville, which repealed prohibition on March 2, 2010, shall have six (6) quota retail drink licenses.

(2) Radcliff, which repealed prohibition on October 4, 2011, shall have eight (8) quota retail drink licenses.

(3) Somerset, which repealed prohibition on June 26, 2012, shall have five (5) quota retail drink licenses.

(4) Murray, which repealed prohibition on July 17, 2012, shall have seven (7) quota retail drink licenses.

(5) Bowling Green, which requested a quota increase on May 18, 2015, shall have forty-one (41) quota retail drink licenses.

Section 5. Quota Vacancies. (1) On or before January 1 of each year, the Department of Alcoholic Beverage Control shall request from the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, population estimates as of that date for all wet cities located in dry counties.

(2) If a city's population has increased and the city no longer has one (1) quota retail drink license for every 2,500 persons resident in the city, the Department of Alcoholic Beverage Control shall increase the city's quota to maintain the 1:2,500 ratio.

(3) If a quota retail drink license vacancy is created under Section 1 or 2 of this administrative regulation or subsection (2) of this section or it occurs for any other reason, the Department of Alcoholic Beverage Control shall within sixty (60) days arrange for the newspaper used for city legal notices to advertise the vacancy and provide information about applying for it.

(4) The Department of Alcoholic Beverage Control shall accept applications for a quota retail drink license vacancy not later than thirty (30) days following the date on which the public notice required by subsection (3) of this section is published.

(5) A licensee that holds a quota retail drink license shall assume the business risk that the number of quota licenses might be increased.

Section 6. Quota Reductions. (1) This administrative regulation shall not prohibit renewal or approved transfer of an existing quota retail drink license issued in a wet city situated in a dry county.

(2) Except for cities with specific quotas under Section 2 of this administrative regulation, if a city has in existence more than one (1) quota retail drink license for every 2,500 persons resident in the city, the number of licenses shall be reduced as they expire or are surrendered or revoked.

Section 7. No Separate City Quota in Wet County. If a dry county in which a wet city is located becomes wet, the quota established for that entire county by 804 KAR 9:010 shall supersede and replace any separate city quota under this administrative regulation. (11 Ky.R. 361; eff. 9-11-1984; 39 Ky.R. 1961; 40 Ky.R. 296; eff. 9-6-2013; 40 Ky.R. 2358; 2702; eff. 7-7-2014; 42 Ky.R. 532; 1179; eff. 11-6-2015.)